# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

RICHTONE DESIGN GROUP, LLC,

Plaintiff/Counter-Defendant,

- against -

Mary Sullivan KELLY and TRUE PILATES BOSTON, LLC,

Defendants/Counter-Plaintiffs/ Third-Party Plaintiffs,

- against -

RICHTONE DESIGN GROUP, LLC,

Counterclaim Defendant,

and

Sean GALLAGHER,

Third-Party Defendant.

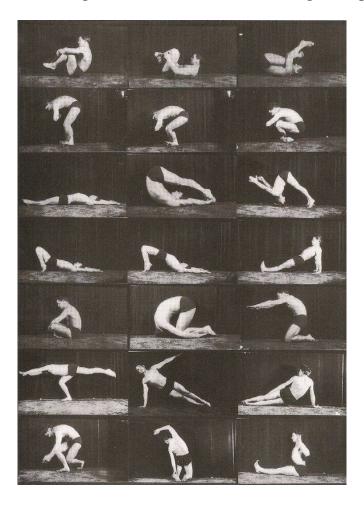
Case No. 22-cv-1606-KMK

#### Declaration of Victoria Batha Cuomo

Victoria Batha Cuomo, being a person over the age of 18 and otherwise competent to testify as to the matters set forth herein, declares as follows:

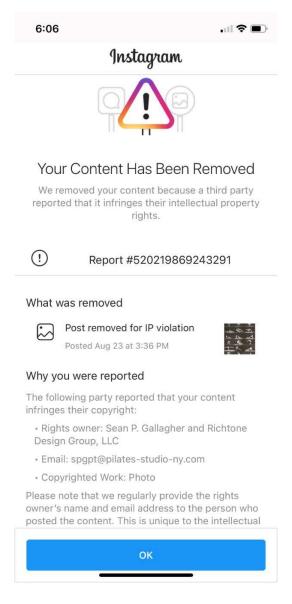
1. I currently teach at Alycea Ungaro's Real Pilates, where I graduated from the Real Pilates Teacher Training Program in 2016. I am a third-generation instructor in Romana Kryzanowska's lineage. In addition, I have a Master's degree in Applied Exercise Physiology from Columbia University, and I am a featured instructor on the Alo Moves app and website.

- 2. Sean Gallagher, <a href="mailto:spgpt@pilates-studio-ny.com">spgpt@pilates-studio-ny.com</a>, claiming copyright infringement on behalf of himself and Richtone Design Group, LLC, filed four takedown notices against my now-closed Instagram account, the "Pilates Snob." The complaints resulted in takedowns of the posts described below and, soon thereafter, the permanent deletion of my account.
- 3. On August 23, 2021, I posted a small jpg of a contact sheet showing Joseph Pilates demonstrating various exercises, which image is reproduced below.



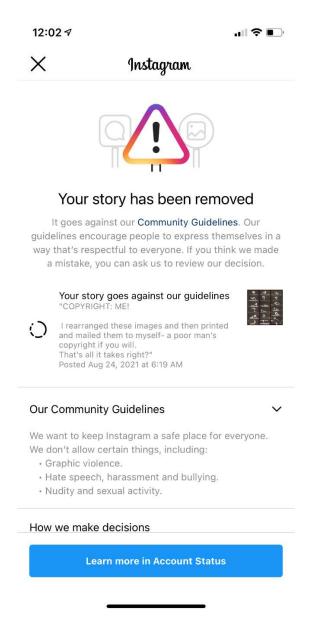
4. On August 24, 2021, the image was removed due to a takedown notice filed by Gallagher after Gallagher and engaged in a lengthy argument with several

people in text messages next to the image post. A screenshot of the notice I received from Instagram is shown below.



5. Angered by the post's removal, and perhaps a bit naïve about what Gallagher would do, I rearranged some of the images in the grid and posted a "Story" with the following tongue-in-cheek text, implicitly taking a jab at Gallagher and his copyright claims:

"COPYRIGHT: ME! I arranged these images and then printed and mailed them to myself – a poor man's copyright if you will. That's all it takes right?" 6. The "Story" was taken down after what I believe was a complaint filed by Gallagher with Instagram. Instagram's notice to me is shown below.



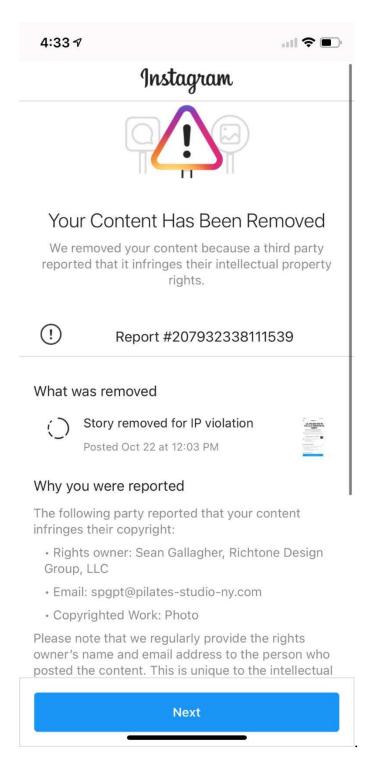
7. On October 7, 2021, after conducting a live interview on Instagram with Ken Endelman for my project, Pilates History Month, I posted the graphic design, shown below, which is from a flier that Mr. Endelman and I discussed during the interview. (Mr. Endelman is the owner of Balanced Body, Inc., a

manufacturer of Pilates equipment.) The flier, which was for a series of exercises called "Around the Clock and Back in One Minute," bears the notice, "Copyrighted 1943." A copy of the full publication is attached below as Exhibit 1.



8. On October 22, 2021, I posted another "Story," this one consisting of the screenshot of the <u>notice</u> I received from Instagram, shown on page 4 above, along with the text, in all caps, "LOL OMG HOW ARE WE STILLLLL REPORTING ME SEAN?" As one can see, the screenshot contained a tiny, cropped, almost imperceptible version of the image that was subject to the previous takedown. In other words, I did not re-post the photographic image, I posted the Instagram notice.

9. Nevertheless, Gallagher filed yet another takedown notice and Instagram removed the post. A screenshot of Instagram's notice to me is shown below.



10. Several weeks later, Gallagher filed a final takedown notice, complaining that my post of the "Around the Clock" image infringed his copyright. With that complaint, Instagram permanently deleted my account.

I hereby state under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed at New York, New York, this 23rd day of October 2022.

By:

Victoria Batha Cuomo

### EXHIBIT 1

### A COMMANDO EXERCISE

#### Around the Clock and back in one Minute

Are you game to try a Commando Exercise? It looks simple — but it's rather straining until you have had lots of practice doing it.

This exercise develops muscles and tissues that the usual physical drills, and even swimming and hiking do not call into play.

This "Around the Clock" stunt is specially effective in correcting bad posture, double chin, flabby & weak abdominal muscles, fat thighs, bulging hips, constipation, poor blood circulation and other similar physical imperfections.

On the next page is the explanation how — in one minute morning and evening — you can go "Round the Clock".

It will do no good whatever just to read about this simple exercise. It must be performed twice daily, day after day, without let up.

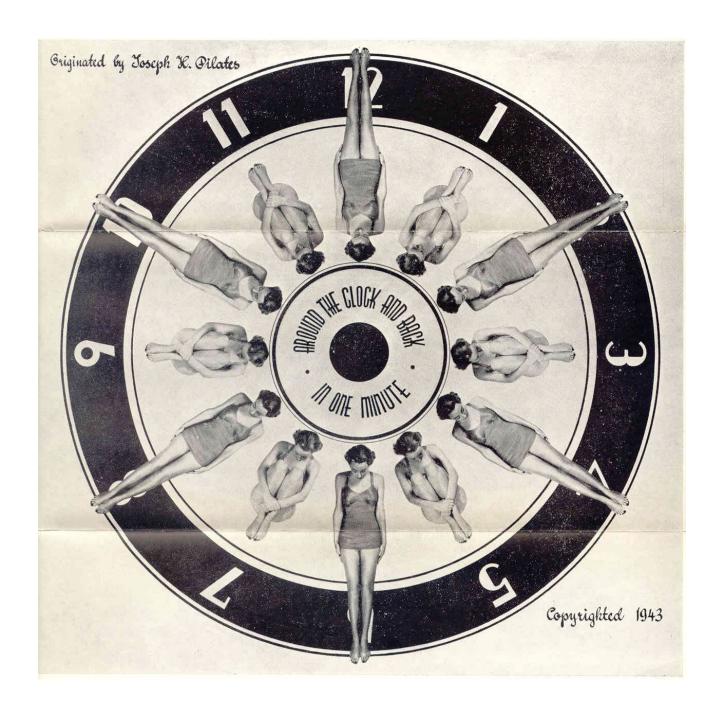
Be a Commando and command yourself to do this one thing each day. You'll be surprised at the result!

Price \$1.00

939 Eighth Avenue New York City

Telephone: Columbus 5-7161

Note: Mr. Pilates will release his copyright for any reprints of this circular to any worthy charity or War Effort upon written application direct to him.



## AROUND THE CLOCK AND BACK IN ONE MINUTE

### Be sure to follow directions carefully

Lie on your back with arms pressed tightly against your thighs, as shown on diagram at 12 o'clock.

Bend head forward until chin touches chest — with straight legs lift feet about three inches off floor and inhale deeply.

Next, exhale fully and double up your legs against chest, thus helping to expel your breath.

Now raise the lower part of the spine slightly off floor and with a pivot-like motion, twist the body around to the right to position shown at one o'clock on diagram.

Again raise spine slightly and give another twist into position shown at 2 o'clock and stretch out flat as at the beginning.

When you have moved from 12 to 2 o'clock, you have completed a cycle of these combination exercises.

You then repeat this process, going to 3 & 4, then 5 & 6, until you again reach 12 o'clock.

Remember always to inhale deeply and exhale fully.

In the beginning, do not attempt to do more than three of these cycles, as the unusual strain may make you uncomfortable. You will be using muscles that have not been properly developed — so take it easy at first.

When you are proficient in going round the clock as a clock hand does, you can reverse the process and do it in reverse order.

If space is too limited to follow out these moves as above, you can go from 12 to 2, and then back again from 2 to 12.



